

## OPINION SUMMARY

### MISSOURI COURT OF APPEALS EASTERN DISTRICT

JEREMIAH JOSEPH PHELPS,	)	ED95648
	)	
Respondent,	)	Appeal from the Circuit Court
	)	of Washington County
v.	)	
	)	Honorable Troy Hyde
DIRECTOR OF REVENUE,	)	10WA-AC00046
	)	
Appellant.	)	Filed: May 22, 2012

The Director of Revenue (DOR) appeals the judgment of the trial court in favor of Respondent Jeremiah Joseph Phelps (Phelps), which found the DOR failed to prove Phelps' blood alcohol content (BAC) was above the legal limit. The DOR argues the trial court erroneously excluded admissible evidence of Phelps' BAC.

REVERSED.

Division One Holds: No transfer of authority from the Department of Health and Senior Services (DHSS) to the Missouri Department of Transportation (MoDOT) took place; therefore a permit to perform a blood alcohol test issued by DHSS is a valid permit under Section 577.202, RSMo. (2010). The trial court erroneously applied the law in excluding the result of a blood alcohol test administered by an officer with a valid DHSS permit. This case is conclusively controlled by this Court's decision in Schneider v. Dir. of Revenue, 339 S.W.3d 533 (Mo. App. E.D. 2011).

Opinion by: Gary M. Gaertner, Jr., J.  
Clifford H. Ahrens, P.J., and Roy L. Richter, J., concur.

Attorney for Appellant: Chris Koster and Samuel Edward Buffaloe  
Attorney for Respondent: Robert S. Adler